REMARKS

Claims 1-21 remain pending in the application. Reconsideration is respectfully requested in light of the following remarks.

Section 101 Rejection:

The Office Action rejected claims 15-21 under 35 U.S.C. § 101, asserting that the claims are directed to non-statutory subject matter. Specifically, the Examiner asserts that claim 15 "is read as specifying an [sic] transmission . . . . signal." Office Action at 3. The Examiner further asserts that "in its broadest reasonable interpretation, independent claim 24, as amended, specifies software (functional descriptive material) embedded in a signal, which is energy."

Applicants energetically traverse the Examiner's remarks.

First, Applicants note that no claim 24 is pending in the application, and assume the Examiner's remarks are directed to independent claim 15.

Second, Applicants note that claim 15 in its current form recites "[a] tangible, computer-accessible storage medium comprising program instructions" (emphasis added). Applicants submit that the clear language of the claim renders it impossible to read claim 15 as specifying a "transmission signal" as asserted by the Examiner. This is because a transmission signal is neither tangible nor a storage medium, but is instead a transmission medium. By contrast, claim 15 specifically requires the recited medium to be a tangible storage medium. As such, the transmission medium asserted by the Examiner clearly falls outside the scope of claim 15 and its dependent claims.

Applicants submit that the fact that the specification describes transmission media embodiments that are outside the scope of the recitations of claim 15 is of no import. The

plain language of claim 15 recites storage media, and it is this language that must govern the Examiner's interpretation of the claim.

A similar analysis applies with respect to the portion of the Examiner's latter assertion referring to software being "embedded in a signal." Since a signal is clearly outside the scope of a storage medium, this aspect of the Examiner's analysis is unsupported.

Finally, according to MPEP 2106.01, "[w]hen functional descriptive material is recorded on some computer-readable medium, it becomes structurally and functionally interrelated to the medium and will be statutory in most cases since use of technology permits the function of the descriptive material to be realized." Further, "a claimed computer-readable medium encoded with a computer program is a computer element which defines structural and functional interrelationships between the computer program and the rest of the computer which permit the computer program's functionality to be realized, and is thus statutory." *Id.* (citing *In re Lowry*, 32 F.3d 1579, 1583-84 (Fed. Cir. 1994)) (emphasis added). Applicants submit that instructions referred to in claim 15 are indicative of computer programming encoded within a storage medium, and thus squarely fall within the ambit of the quoted sections of MPEP 2106.01.

For at least the foregoing reasons, Applicants submit that claims 15-21 recite statutory subject matter, and respectfully request that the 35 U.S.C. § 101 rejection be withdrawn.

Section 112, Second Paragraph Rejection:

The Examiner rejected claims 1, 8, and 15 under 35 U.S.C. § 112, second paragraph as indefinite. Specifically, the Examiner asserted that "Examiner is not clear as to the new added limitations, 'programming-language independent interface . . . configured to receive a request to access [. . .] file system content . . . without dependence on a programming language in which the application is implemented'" and in

particular that the Examiner could not find the quoted limitations explained within the specification. Office Action at 4. Applicants traverse the rejection and note that the Examiner appears to be grounding the rejection in terms of written description support, which is governed by 35 U.S.C. § 112, first paragraph.

Applicants submit that claim 1 as amended is both definite and supported by the specification. Applicants note that according to the specification, "[f]ilter driver 221 includes programming language independent interface 305." Specification at p. 14, lines 9-10 (emphasis added). Further, "filter driver 221 may be configured to perform operations in response to requests received from applications or processes within the user space 210." *Id.* at p. 11, lines 14-16 (emphasis added). In the course of processing such a request, "[a]fter the appropriate file system content is selected, it may be returned to the application or process that requested it via the file operation (block 408). For example, in one embodiment interface 305 may place selected file data or metadata in a buffer and return a pointer to the buffer to given process 212 via file system 205 and API 214." *Id.* at p. 25, lines 2-5 (emphasis added).

Further, "[i]nterface 305 may be configured to provide a protocol whereby a given software application may access file system content, such as file data or metadata corresponding to a given file, independently of the programming language or format of the application or the associated API. Thus, interface 305 may allow any software application capable of accessing a file to access any file data included in or metadata associated with that file, regardless of programming language issues or the specific metadata requested." *Id.* at p. 19, lines 8-13 (emphasis added). Applicants note that an interface of a filter driver that receives requests from applications, where the interface provides access to file system content to the applications independently of the programming language of the application, is equivalent to an interface that receives such requests without dependence on a programming language in which the application is implemented, since "independently" is synonymous with "without dependence."

Applicants submit that the foregoing portions of the specification taken in context with the remainder of the specification provide clear written description support for independent claim 1 and similar independent claims 8 and 15, and that the language of these claims is definite on its face. Applicants therefore respectfully request that the 35 U.S.C. § 112, second paragraph rejection be withdrawn.

Section 102(e) Rejections:

The Office Action rejected claims 1-21 under 35 U.S.C. § 102(e) as being anticipated by Borthakur et al. (U.S. Patent Application Publication No. 2005/0114406) (hereinafter, "Borthakur"). Additionally, the Office Action provisionally rejected claims 1-21 under 35 U.S.C. § 102(e) as being anticipated by copending Application No. 10/723,729 (the '729 application). Applicants note that the '729 application is identical to and was published as the Borthakur reference cited above. Therefore, Applicants submit that the provisional rejection is redundant with respect to claims 1-21, and that the comments below apply equally with respect to both rejections.

Applicants continue to traverse these rejections for the reasons set forth in response to the previous Office Action. Applicants further submit that the rejected claims are not anticipated by the Borthakur reference. Specifically, Applicants have filed herewith declarations under 37 C.F.R. § 1.132 (Rule 132) to overcome the rejection of claims 1-21 under 35 U.S.C. § 102(e) as being anticipated by Borthakur. Applicants submit that the Rule 132 declarations overcome the rejection under 35 U.S.C. § 102(e) pursuant to MPEP §§ 715.01(c), 716.10, and 2136.05. Accordingly, Applicants respectfully request that the rejection of claims 1-21 under 35 U.S.C. § 102(e) be withdrawn.

CONCLUSION

Applicants submit the application is in condition for allowance, and notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5760-18500/AMP.

Respectfully submitted,

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